

Clerk's stamp:



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COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFF

GUSTAVSON CAPITAL CORPORATION

DEFENDANT

MARV HOLLAND APPAREL LTD.

DOCUMENT:

AFFIDAVIT

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

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I, Peter Gustavson, of the City of Victoria, in the Province of British Columbia, make oath and say that:

1. I am the President and Director of the Plaintiff, and as well I am a current duly authorized officer of the Defendant, and as such I have personal knowledge of the facts and matters hereinafter deposed to, except where otherwise stated.
2. The Defendant is an Edmonton-based manufacturer of fire resistant garments and technical wear, primarily carrying on business at its chief executive office at 10939-120 Street NW, Edmonton AB T5H 3R3 (the "**Edmonton Premises**") where it leases space from its landlord Plan Nine Inc. under a Lease that is substantially in arrears in the approximate amount of \$125,000.00.
3. The Plaintiff also leases space in Victoria, British Columbia (which is approximately \$10,000.00 in arrears) at which 3 of the Defendant's employees work.
4. In addition to the Defendant's 2 sales employees, 1 located in Nova Scotia, and the other located in Saskatchewan (where the Defendant does not lease space), 59 of the Defendant's employees work at the Defendant's Edmonton Premises.

5. The Defendant also leased space in or near Toronto, Ontario and in Kingwood, Texas which are now vacant since the Defendant decided to terminate its presence at both locations. The approximate lease arrears to the Defendant's former Texas landlord, Real Sunshine, is \$154,000.00 and the approximate arrears to the Defendant's former Toronto landlord, Thoms Contractors Corp., is approximately \$5,500.00.
6. The Plaintiff owns 65% of the issued and outstanding Shares of the Defendant, and the other Shareholder of the Defendant that owns the remaining 35% of the issued and outstanding Shares of the Defendant, is 1001966 Alberta Ltd. ("**1001966**"), which according to the Alberta Corporate Registry search result attached hereto as Schedule "A" is wholly owned by Marv Holland Alter Ego Trust.
7. Both the Plaintiff and 1001966 have, since June 2010, injected working capital and operating deficits into the Defendant by shareholders' loans each in the amount of \$1,700,000.00, for a total of \$3.4 million in shareholder's loans advanced to the Defendant as at December 31, 2012.
8. In March 2013, the Defendant faced a further cash shortage at which point 1001966 decided not to invest any further funds by shareholder's loan to the Defendant, but the Plaintiff to cover the Defendant's cash shortage advanced an additional shareholder's loan of \$1.7 million to the Defendant on March 27, 2013.
9. As part of the transaction, by which GCC advanced the additional shareholder's loan of \$1.7 million to the Defendant on March 27, 2013, 1001966 subordinated its claims and security against the Defendant in favor of the Plaintiff, and the Plaintiff's shareholdings increased from 51% to 65%.
10. Attached hereto and marked as Exhibits to this my Affidavit are the following Promissory Notes executed and delivered by the Defendant in favour of the Plaintiff (the "**Plaintiff's Notes**"), namely:
 - (a) Exhibit "B" is a copy of the Promissory Note dated September 26, 2012 in the principal amount of \$1,700,000.00 that was granted for the repayment of the Plaintiff's first \$1,700,000.00 shareholder's advance to the Defendant; and
 - (b) Exhibit "C" is a copy of the Promissory Note dated March 27, 2013 in the principal sum of \$1,700,000.00 that was granted for the payment of the Plaintiff's second additional \$1,700,000.00 shareholder's advance to the Defendant.
11. In addition to the Defendant's shareholder's loans to the Defendant, the Plaintiff agreed with the Defendant to grant a corporate guarantee to one of the Defendant's major suppliers, namely

Milliken and Company carrying on business in Spartanburg, South Carolina (the "**Plaintiff Milliken Guarantee**") by which the Plaintiff has agreed to pay Milliken any liability payable by the Defendant to Milliken to the extent that any such liability is greater than the sum of \$500,000.00, and the Defendant agreed to pay to the Plaintiff a monthly fee equal to \$1,875.00 US payable on the last business day of each month (the "**Milliken Guarantee Fees**") until the Plaintiff Milliken Guarantee expires on December 31, 2013 (the "**Plaintiff's Defendant Milliken Guarantee Agreement**").

12. Attached hereto and marked as Exhibit "D" of this my Affidavit is an executed copy of the Plaintiff Milliken Guarantee.
13. As continuing collateral security for the payment of all present and future indebtedness and liabilities of the Defendant to the Plaintiff, the Defendant by General Security Agreement dated June 1, 2010 executed and delivered by the Defendant in favor of the Plaintiff (the "**Plaintiff GSA**"), has granted to the Plaintiff a security interest in all present and after-acquired personal property and undertaking of every description and kind and wheresoever situate (the "**Plaintiff's Security Interest**"), and a copy of the executed Plaintiff GSA is attached hereto and marked as Exhibit "E" to this my Affidavit.
14. As and from June 1, 2010, the Plaintiff's Security Interest granted under the GSA has been and has continued to be duly registered in favor of the Plaintiff at Alberta Personal Property Registry ("**APPR**") under registration no. 10060134081.
15. Attached hereto and marked as Exhibit "F" to this my Affidavit is a copy of an APPR Search Result Report for all registrations registered against the Defendant as at June 26, 2013, which confirms the registered Plaintiff's Security Interest, and as well the registration of security interests held by:
 - (a) 1001966 Alberta Ltd. ("**1001966**") which has been postponed by 1001996 in favor of the Plaintiff as deposed in paragraph 9 above; and
 - (b) the registration of the security interest of the Defendant's other major secured creditor, namely the Bank of Montreal ("**BMO**"), registered against the Defendant at APPR as and from August 5, 2010 under registration no. 10080532922 which the Defendant has granted to BMO as continuing collateral security for all present and future indebtedness and liabilities of BMO to the Defendant.
16. The outstanding loans and credit advanced by BMO to the Defendant in the approximate amount of \$2,200,000.00 are governed by a Commitment Letter accepted by the Defendant on

November 6, 2012, a copy of which is attached hereto and marked as Exhibit "G" to this my Affidavit (the "**BMO Commitment Letter**").

17. As confirmed in the BMO Commitment Letter, the Plaintiff's Security Interest and the 1001966 security interest registered at APPR, have each been postponed under Postponement and Subrogation Agreements executed by the Defendant and by 1001966 in favor of BMO.
18. Over the period from mid-May 2013 to June 19, 2013, it became readily apparent to the Defendant, 1001966 and the Plaintiff that the Defendant is in need of additional operating capital due to the fact that:
 - (a) MHA had maximized its operating line with BMO; and
 - (b) the Defendant, notwithstanding the Plaintiff's further \$1.7 million loan advanced on or about March 25, 2013, was suffering operating losses as a result of its declining revenue.
19. At a duly called Defendant's Directors' meeting held on June 19, 2013, the Directors were informed that neither the Plaintiff nor 1001966 was willing to inject additional capital and loan advances to the Defendant, and the Directors passed the unanimous June 19, 2013 Directors' Resolution, a copy of which is attached as Exhibit "H" hereto (the "**June 19, 2013 Resolution**"), by which I was appointed as the authorized officer of the Defendant to commence whatever proceedings and to executed whatever documents are required to bring the affairs of the Defendant under the purview of the Courts, in cooperation with the secured senior lenders of the Defendant, including but not limited to consenting to the appointment of a Receiver or the filing of an Assignment into Bankruptcy.
20. Under the terms and conditions of the Plaintiff's Notes, the Plaintiff's Milliken Guarantee Agreement, and the Plaintiff's GSA, the Defendant is indebted and liable to pay to the Plaintiff the sum of \$3,405,898.38, plus interest accruing on the outstanding principal sum of \$3,400,000.00 payable under the Plaintiff's Notes in the amount of \$48,065.40, plus further interest accruing from June 25, 2013 at the rate of \$558.90 per day, plus all present and future Plaintiff costs and expenses, including without limitation all present and future solicitor and own client costs on a full indemnity basis (the "**Defendant's Debt**").
21. In addition to the secured debts that the Defendant owes to BMO, the Plaintiff and 1001966, and amounts payable to the Defendant's employees, the Defendant has approximately 143 unsecured creditors totalling in aggregate approximately \$1,510,000.00, which includes Company suppliers, landlords and other trade creditors.

22. Attached hereto and marked as Exhibit "I" to this my Affidavit is a copy of the Defendant's demand for the payment of the Borrower Debt, together with the Defendant's ss.244(1) *Bankruptcy and Insolvency Act* Notice of Intention to enforce the Plaintiff's GSA for the recovery of the Defendant's Debt, which the Plaintiff caused its solicitors to serve upon the Defendant in care of its Alberta attorney on June 25, 2013.
23. As per the authority given to me under the June 19, 2013 Resolution, I, subsequent to the service of the Plaintiff's demands and notice, executed on behalf of the Defendant the Defendant's Waiver and Consent to the Plaintiff taking steps to cause the Defendant to be put into receivership by Court Order and to cause the Defendant to be assigned into bankruptcy, and attached hereto and marked as Exhibit "J" is a copy of the Waiver that I have endorsed on behalf of the Defendant on the Plaintiff's s.244 Notice of Intention to enforce the Plaintiff's GSA Security.
24. The Defendant's realizable assets, to the best of my information and belief, include the following:
- (a) outstanding receivables in the approximate amount of \$1.8 million;
 - (b) non-obsolete inventory raw materials that have a book value of approximately \$6,800,000.00;
 - (c) obsolete inventory valued at cost at approximately \$2,300,000.00, which has an estimated value of approximately \$500,000.00; and
 - (d) tangible fixed assets at the Defendant's Business Premises primarily consisting of furniture, computer equipment, and manufacturing equipment that have a book value of approximately \$800,000.00.
25. The Plaintiff has made arrangements with PricewaterhouseCoopers Inc. to obtain their agreement to act as Receiver of the Defendant, and as Trustee of the Defendant's bankrupt estate, and I do verily believe that it is just and convenient that the Court grant an Order appointing PricewaterhouseCoopers Inc. as Receiver of the Defendant and all of its property and undertaking, by reason that:
- (a) the Defendant has made arrangements to shut down its business and to terminate all of the Defendant's employees by reason that it is insolvent and no longer able to carry on business;
 - (b) the Defendant's June 19, 2013 Directors' Resolution has resolved that the Defendant should be ordered into receivership or assigned into bankruptcy;

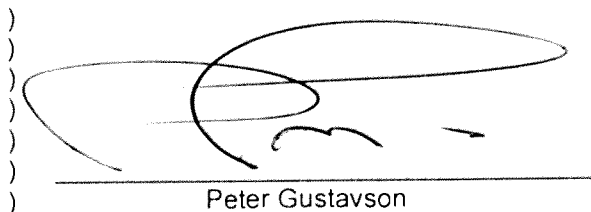
- (c) all of the Directors of the Defendant have resigned and such resignations have been accepted by the Shareholders of the Defendant; and
 - (d) a receivership appointment by the Court will serve to promptly secure the Defendant's assets, and to realize on such assets on commercially reasonable terms in and orderly fashion in the best interests of the Defendant's creditors.
26. To the best of my information and belief, the Company's other major secured creditors, namely BMO and 1001966, have no objection to the Defendant being ordered into receivership and assigned into bankruptcy, and in accordance with the authority given me under the June 19, 2013 Directors' Resolution, I will provide my consent on behalf of the Company for the Receivership Order, and execute such documents as should be necessary, to cause PricewaterhouseCoopers Inc. to be appointed Receiver of the Corporation, and as Trustee of the Corporation's bankrupt estate.

SWORN BEFORE ME at the City of Victoria, in the
Province of British Columbia, this 26th day of June,
2013



A NOTARY PUBLIC IN AND FOR THE
PROVINCE OF BRITISH COLUMBIA

PETER VAARTNOU
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Peter Gustavson